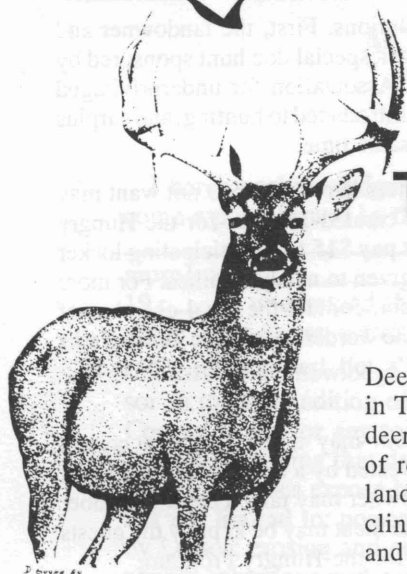




Texas Agricultural Extension Service



The Texas Deer Lease

Judon Fambrough*

Deer hunting is big business in Texas. Lease hunting for deer continues to be a source of revenue for many Texas landowners following declines in both agriculture and the petroleum industry.

Texas landowners hold a unique position for lease hunting. Unlike many other states, Texas has little federally- or state-owned land available for public hunting. Thus, the private landowners control the major supply of huntable land. This position affords Texas landowners an important source of income.

Location of the deer and not the **ownership** of the animals, however, generates the revenue. In Texas, all indigenous wild animals such as white-tailed deer belong to the state. As such, the state can regulate the taking of game through hunting laws.

Although the state regulates when, how and how many deer may be taken, the state cannot authorize trespassing on privately owned land. Permission from private landowners must be secured. Granting the right to enter and hunt generates the income for private landowners.

Historically, permission to hunt was granted for the asking. Recently, however, Texas landowners have begun exacting a price for this privilege in the form of an agreement commonly referred to as a hunting lease. Depending upon the size of the lease tract, the abundance of game and the amenities available to the hunter, prices may range from a few dollars per day to thousands of dollars per season. The lease may last a few hours, a few days, several weeks or the duration of the hunting season.

The so-called Texas hunting lease is not, in fact, a lease but rather a license. Technically, a lease is a contract that conveys exclusive possession or control of land to another for a specified period. A license, on the other hand, grants permission to do something that otherwise would not be allowed or would be illegal. Because the typical Texas

hunting lease does not grant the hunter exclusive possession or control of the land, it is better characterized as a license. However, in this publication, the common term "lease" is used.

Granting the hunting lease takes numerous forms. It may be given orally on the payment of a specified amount of money. Or, it may be given by way of an elaborate written document covering all aspects of the hunt, including how the landowner's property may be used.

Whether the lease is oral or written, the landowner and hunter should concur on key issues before consenting to the agreement. By doing so, each party knows what to expect and thereby avoids possible misunderstandings. The terms of the agreement may affect the lease price.

Duration of the lease term

The agreement should specify the beginning and end of the lease term. If the hunter has the privilege to scout the premises, set up feeders, erect blinds or conduct other similar projects before the season begins, this should be stated.

Description of the lease tract

The exact area on which the hunting privilege is granted, to the exclusion of all others, should be described. If a legal or metes-and-bounds description is not available, a sketch or plat is the next best thing. The lease should prohibit the hunter from entering other property except to access the hunting premises.

Access to lease tract

If the land does not have a public access, the specific route or routes for the hunter's ingress and egress should be designated. When there is more than one public access, the landowner may wish to restrict the hunter's use to only one or two.

Game to hunt

Generally, the primary game animal is white-tailed deer. Other game may be present, such as doves, quail, ducks, turkeys, pigs, exotics and varmints. The agreement should state what game may be taken and when. Some leases may deny quail hunting until the deer season closes. Other limi-

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tations may be imposed. The price of the hunting lease may rise with the permission to hunt more game.

Hunting weapons

The parties need to agree on types of weapons that may be used to take game. The list may include all legal weapons or may be limited to centerfire rifles, muzzleloaders, shotguns or bows, depending on the game hunted.

Hunting method

The hunting method, in part, is related to the types of weapons that may be used. The agreement may limit shooting to blinds only, may restrict shooting from a vehicle or may allow stalking only during bow season. Some leases may allow certain types of hunts only when a guide or designated individual accompanies the hunter.

Dogs may be prohibited or limited to pursuing quail and doves or trailing wounded deer.

It is against the law to hunt deer at night. However, it is legal to hunt some other game such as raccoons. The lease should state whether legal night hunting is permitted. For example, it may be prohibited only during deer season.

Density of hunters and guests

The number of hunters who may participate in a particular lease needs to be specified. Generally, the landowner will specify the maximum number, or make individual agreements with each hunter or group of hunters. However, the lease needs to state whether guests of hunters will be allowed and when. If hunting guests are allowed, the quantity of game the guests may take must be determined. For instance, if the game limit on deer is four per hunter per season – i.e., two bucks and two does, can a guest hunter harvest a deer in addition to the four allowed the lease hunter who invited the guest?

Also, if guests are permitted, must the host hunter accompany (or be on the premises with) the guests? Children below a certain age may not be permitted to hunt, or the landowner may require that they be physically accompanied by an adult at all times. Must hunters assume the responsibility and liability for the acts of their guests?

Finally, the maximum number of both hunters and guests that may be present on the leased premises at any one time should be stipulated.

Order of deer taken

Many Texas hunters want trophy deer only. Harvesting a doe is out of the question. To ensure that an adequate number of does is harvested, the landowner may require one or more does to be taken before a buck.

Harvesting surplus does

Much of Texas is being overrun by does. The buck-to-doe ratio in some areas exceeds 1 to 10. Even with hunters taking their limit, the overcrowding persists. For this reason, the

landowner and hunters may wish to address the problem of surplus does.

Here are two possible solutions. First, the landowner and hunters may agree to allow a special doe hunt sponsored by the Texas Game Warden Association for underprivileged children. The children are introduced to hunting, and surplus does are harvested at the same time.

Second, any does the hunters harvest but do not want may be donated to the newly created Hunters-for-the-Hungry Program. The hunter must pay \$15 to a participating locker to process the meat to be given to needy families. For more information on the program, contact the local chamber of commerce or the local game warden or call the Texas Parks and Wildlife Department's toll free number, 1-800-792-1112.

The landowner and hunters may agree that if a certain number of does is not harvested by a certain date, guests of either the hunters or landowner may take a certain number before the season ends. The meat may be kept by the guests or donated to the Hunters-for-the-Hungry Program.

Lease price

The price of the lease per year, per day, per hunter or per animal needs to be set. The price may vary according to the lease terms. For instance, the lease price may rise as the duration of the lease, the number of game animals allowed, the lease tract size, the types of weapons and permitted hunting methods increase.

Some deer leases are priced by the sex and quality of the deer harvested. For example, there may be one price for each doe, while the price for bucks varies with antler quality.

Payment schedule

The lease may be paid either in lump sum when privileges begin or periodically throughout the year. Generally, the landowner will require partial payment before the hunting season to ensure that the hunter will honor the contract on opening day. The agreement should address the consequences of missing an installment payment. Are all prior payments forfeited or may the landowner pursue the hunter in court for the balance?

Use of facilities

The price of the lease should reflect the quantity and quality of hunting facilities available to the hunter. Any hunting facilities on the lease usually are at the disposal of the hunter, but this should be clarified before hunting begins. The manner in which the facilities are maintained should be spelled out. For instance, the party who has the duty to clean the premises, repair broken appliances, windows, plumbing or other property should be stated.

If the lease does not have overnight accommodations, or if they are not available to the hunter, the parties need to decide if overnight camping will be permitted and where. Fires may be restricted, and cleanup may be required.

Clearing senderos and improving premises

If the lease permits the hunters to maintain and improve the lease by clearing and maintaining senderos (cleared lanes for shooting), improving the roads and crossings, bringing in electricity, digging water wells, erecting a camphouse and so forth, the tasks may be at the hunter's discretion. The expenses, however, may be borne solely by the hunter, solely by the landowner or shared, depending on the agreement.

If the hunter is entirely or partially liable for the expenses, the lease agreement should prohibit the attachment of any liens on the property by virtue of the improvements.

Vehicular travel

Travel in vehicles may be restricted. Some landowners may prefer that the hunter use only existing roads. The use of off-road or four-wheel-drive vehicles, except on existing roads, may be prohibited. Others may allow off-road travel but not across improved pastures, cropland, wet ground or other inappropriate areas. Depending on the terrain, speed limits may be imposed.

Blinds and game feeders

Most Texas deer are taken from deer blinds. The blinds may be provided by the landowner or erected by the hunter. Permission to use pre-existing blinds should be discussed as well as the hunter's installation of new ones.

In particular, an agreement should stipulate the:

- landowner's liability, if any, for injuries incurred by hunters using the blinds;
- necessity of obtaining the landowner's permission for both the construction and location of blinds and game feeders installed by the hunter and the construction of any senderos incidental thereto;
- fate of blinds and feeders installed by the hunter but not removed within a designated period after the lease terminates; and
- duty of the landowner, if any, to fill and maintain feeders both before and during the hunting season.

NOTE: *To lure game off adjacent property, hunters may erect both blinds and feeders on fence lines and kill crossing game. Although the practice is legal, it may create hard feelings. For this reason, landowners may require their prior permission for locating and installing blinds and game feeders near boundary fences.*

Also, to ensure the presence of game and a fairer hunt, the landowner may prohibit hunting within a certain distance from watering holes and feeders. Alternatively, the landowner may restrict hunting around certain feeders maintained exclusively by the landowner.

Regardless of the location of blinds, the agreement should prohibit shooting across boundary fence lines.

Handling harvested game

Landowners may stipulate where deer may be hung and cleaned. Likewise, the disposal of the carcass and other unusable portions may be restricted if deer are cleaned and quartered on the leased premises.

Gates and keys

The lease usually requires the hunter to keep all gates shut and possibly locked. If the hunter is given a key, it should be returned at the termination of lease privileges.

Right of inspection

The landowner may reserve the right to inspect the camphouse, motor vehicles and the game bags of hunters and guests on the leased premises to check compliance both with the lease terms and game laws. The same privilege extends to any game warden with the Texas Department of Parks and Wildlife.

Camp safety

The agreement may impose certain safety rules around the camphouse. In particular, procedures to ensure that all guns are checked and unloaded should be implemented. Also, consumption of alcohol may be prohibited.

Transferability of lease rights

The lease should address whether the rights and obligations of either party to the agreement may be transferred or assigned. The lease may permit a transfer but only with the other party's prior consent. If all or a part of the leased premises are sold during the lease term, the impact, if any, on the lease should be addressed.

Hunting rights of landowner

Generally, the lease grants the hunter or hunters the exclusive right to hunt the land. However, if it is not so stated, some understanding should be reached as to whether the landowner, the landowner's family and guests have the right to hunt.

Right of renewal

The hunter and the landowner may want to undertake long-term projects to enhance the habitat and hunting facilities. Because most leases are on a short-term basis, the hunter may want to include a right of renewal in the lease so the hunter can reap the long-term benefits from such projects. Likewise, the landowner may insert a renewal clause because of the favorable relationship the two parties have established in the past.

Compliance with game laws and recordkeeping

Obviously, the hunter must comply with state hunting laws, but the agreement should require this. Compliance should include not only the taking of game but also the completion of the daily hunting ledger required by Section 43.0485 of the Texas Parks and Wildlife Code. The name, address and

hunting license number of each hunter must be entered along with the number and type of game killed each day.

In addition to the hunting ledger, the landowner may want other pertinent information concerning each harvested deer. The landowner may require the hunter to:

- record the spread and number of tines of each harvested buck;
- record the weight of each harvested deer;
- furnish photographs of the front, back and sides of each harvested buck;
- furnish the lower jaw or one side of the lower jaw of each harvested deer; and/or
- identify on a map the approximate location where each deer was harvested.

In some trophy-hunting areas, the landowner may require the hunter to mount the head of a trophy buck and allow it to be displayed at the ranch's headquarters for a specified period.

Cooperation with other surface users

Hunters must share the use of the surface with the landowner or with other lessees. This includes those with grazing leases, farming leases and oil and gas leases. The lease needs a cooperation clause whereby the hunters agree to cooperate with other surface users and not infringe on their rights.

At the same time, conflicts may arise. For example, hunters using roads built by oil companies; oil companies drilling in prime hunting areas; landowners clearing habitats for agricultural use; livestock ruining or destroying feeders and blinds; and hunters killing or injuring livestock or damaging fences and gates may create potential problems.

The lease needs to address how to resolve such conflicts.

Filing lease of record

In some areas of the state, it is customary to record the lease agreements in the official county records. The lease can be recorded only if the parties sign the document before a notary public. Recording gives notice of the hunter's rights to the leased premises. The lease is effective, however, without being recorded.

The lease agreement may address recording. If either party insists on recording, a memorandum of the hunting lease may be prepared, executed by the parties before a notary public and recorded in lieu of the actual agreement. A memorandum gives effective notice of the hunter's rights without disclosing the details of the agreement.

Use for nonhunting purposes

The hunter may want to use the leased premises for non-hunting purposes both in and out of hunting season. The activities may include camping, fishing, photography, target shooting and other recreation.

The uses permitted need to be described. Some limitation may be imposed as to where and when certain activity may be conducted in relation to the hunting season. Using bottles for targets should be prohibited.

Resolving disputes

Probably one of the most difficult issues is establishing the consequences for breaching the lease agreement. If neither party abides by the agreement, the agreement is useless. To ensure compliance, some method of resolution needs to be established.

Depending on the severity of the violation, the consequences may range from immediate termination of the lease without refunding the lease fees to the denial of certain privileges granted under the lease. This may include forfeiting the right to take a full limit of deer during the season or denial of the right to conduct off-season activities such as camping and fishing.

Obviously, the dispute resolution will be the most difficult issue to negotiate, yet it is vitally important to the overall agreement.

Landowner's liability to hunters

A landowner's liability (or responsibility) for anyone entering the property depends on the legal classification of the person at the time of injury. There are four categories: an invitee, a licensee, a trespasser and children under the attractive nuisance doctrine. Theoretically, a hunter could fit in any one of these categories.

Fee-paying hunters are classified as invitees. Landowners have a legal duty to keep the premises safe for the invitee's protection. The landowner must give the fee-paying hunter adequate and timely notice of concealed or latent perils (dangerous conditions) that are personally known or that a reasonable inspection would reveal. Injuries caused by dangerous conditions that are apparent or that could be revealed by reasonable inspection are the landowner's responsibility.

Nonpaying hunters with permission to hunt are classified as licensees. Landowners have a legal duty to warn licensees of known dangerous conditions or to make the conditions reasonably safe. No inspection is required.

Hunters who enter without permission are classified as trespassers. The landowner owes them no legal duty. The law prohibits the landowner from willfully or wantonly injuring a trespasser except in self-defense or when protecting property. The landowner is liable for gross negligence or for acts done with malicious intent or in bad faith.

Unaccompanied, trespassing children are protected by the attractive nuisance doctrine. An attractive nuisance exists when: the child is too young to appreciate or realize a dangerous condition; the location of the condition is one that the landowner knew or should have known children frequent; and the utility of maintaining the condition is slight compared to the probability of injury to children. The landowner may avoid liability if any one of these conditions is missing.

**RELEASE OF LIABILITY
AND
ACKNOWLEDGMENT AND ACCEPTANCE
OF DANGERS, RISKS AND HAZARDS
OF HUNTING LEASE**

I hereby acknowledge that I have knowingly and willingly entered a Hunting Lease Agreement, or become a party bound by the terms and conditions of a Hunting Lease Agreement by and between _____, et al. (hereinafter the Lessor, whether one or more), and _____, et al., dated _____, 19____. I understand the terms, provisions and conditions of the Hunting Lease Agreement and will abide by its terms, provisions and conditions.

I further acknowledge and understand that no warranty, either express or implied, is made by the Lessor as to the condition of the hunting lease (hereinafter the leased premises) located in _____ County, Texas, or any roads, buildings, gates or other improvements located thereon. This document is sufficient warning that dangerous conditions, risks and hazards do exist. My presence and activities on the leased premises expose both me and my property to dangerous conditions, risks and hazards, including but not limited to: poisonous snakes, insects and spiders; blinds and tree stands, whether or not erected by Lessor; erosion and general condition of the land, both on and off roadways or senderos, creating rough, hazardous and dangerous driving and walking conditions; animals both wild and domestic that may be diseased and/or potentially dangerous; deep water; persons with firearms both on or off the leased premises; and the use of vehicles. I hereby state that I expressly assume all such dangers, risks and hazards.

In consideration for the right to enter the leased premises, I hereby release and agree to protect, indemnify and hold harmless the Lessor and his or her respective agents, employees and assigns from and against any and all claims, demands, causes of action and damages, including attorneys' fees, resulting from any accident, incident or occurrence arising out of, incidental to or in any way resulting from the use of the leased premises and all improvements thereon, whether or not caused by the Lessor's negligence or gross negligence. This release applies during the time that I am permitted on the leased premises. I hereby further covenant and agree that I, my heirs, successors and assigns will not make any claim or institute any suit or action at law or in equity against the Lessor or his or her respective heirs, agents, representatives, employees, successors or assigns.

As used in this release, the terms *I*, *my person* and *myself* include minors in my care while on the leased premises.

Dated and signed this _____ day of _____, 19____.

(Hunter's Signature)

(Hunter's Printed Name)

Hunter's
Address:

This waiver form was presented by Dean Patton, an attorney with Morrill, Patton and Bauer in Beeville, at the 13th Advanced Real Estate Course sponsored by the Texas State Bar in 1991. It has been edited by the Real Estate Center at Texas A&M University and is offered as a sample only.

According to present revisions to Chapter 75 of the Texas Civil Practices and Remedies Code, landowners owe a recreational guest (hunter) no greater degree of care than is owed a trespasser if there is no charge for entry.

If there is a charge, the trespassory degree of care remains until the total charges collected during the previous calendar year exceed twice the total amount of ad valorem taxes imposed on the premises during the same period.

If the fee limit is exceeded, then the landowner faces the degree of care owed to either an invitee or licensee, whichever the case may be. The amount charged has no effect on the attractive nuisance doctrine.

The hunting lease becomes a two-edged sword. Landowners receive an economic benefit for allowing the person to enter and hunt. At the same time, they may bear the risk and responsibility for the hunter's safety.

What, then, are the landowner's alternatives for limiting liability?

First, the landowner may charge no fee or charge no more than twice the amount of ad valorem taxes imposed on the hunting premises. This is not a viable option for large-scale operations or where agricultural-use valuation is taken.

Second, the landowner can do as the law dictates--inspect the property routinely and either warn the hunters of the dangerous conditions or make the conditions safe. This may be difficult because conditions change rapidly. Notifying all hunters of a dangerous condition may prove impossible.

Third, although insurance does not absolve the landowner of liability, a policy provides a source of funds. However, two apparent problems emerge. If the premium costs are passed to the hunters, the lease price may become prohibitive. Second, insurance actually may spur litigation.

Conversely, the landowner may require the hunters to purchase and assign a liability insurance policy to the landowner covering the landowner's liability to the hunters.

Again, the premiums may cause the lease price to become prohibitive.

Fourth, the landowner may obtain waivers from hunters releasing the landowner from liability. A waiver is defined as the intentional relinquishment (or surrender) of a known right. To be effective, the hunter must realize what rights are being given up (forfeited). The hunter must grant the waiver willingly and intentionally. Finally, there must be consideration, but it need not be monetary. It could be the right to enter and hunt.

For some protection from the attractive nuisance doctrine, the landowner or lease agreement may require all children to be accompanied by an adult.

A waiver form was presented by Dean Patton, an attorney with Morrill, Patton and Bauer in Beeville, Texas, at the 13th Advanced Real Estate Law Course sponsored by the Texas State Bar in 1991. The Real Estate Center has edited the form and included it at the end of this report. Neither Patton nor the Real Estate Center endorses the form. It is offered as an example only.

Conclusion

This report lists some of the more important issues that the landowner and hunter should resolve prior to or in conjunction with granting permission to hunt. Not all items apply to every lease. The terms must be tailored to the particular situation.

Preferably, the lease agreement should be written and signed to establish the exact terms and conditions. A lease agreement allows all parties to realize the privileges being both granted and received for the fee paid.

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Issued in furtherance of Cooperative Extension Work in Agriculture and Home Economics, Acts of Congress of May 8, 1914, as amended, and June 30, 1914, in cooperation with the United States Department of Agriculture. Zerle L. Carpenter, Director, Texas Agricultural Extension Service, The Texas A&M University System.